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12 **UNITED STATES DISTRICT COURT**

13 **DISTRICT OF NEVADA**

14 AC MEDIA GROUP, LLC, a Nevada limited  
15 liability corporation; and CREEL PRINTING  
16 & PUBLISHING CO., INC., a Nevada  
17 corporation;

18 Plaintiffs,

19 v.

20 SPROCKET MEDIA INC., a foreign  
21 corporation; and KYLE H.  
22 WALKENHORST, an individual,

23 Defendants.

24 Case No. 2:16-cv-02145-APG-GWF

25 Judge Andrew P. Gordon

26 Magistrate Judge George W. Foley

27 **STIPULATED PROTECTIVE ORDER  
28 AND CONFIDENTIALITY  
AGREEMENT**

29 WHEREAS, Plaintiffs AC Media Group, LLC and Creel Printing & Publishing Co., Inc.  
30 (collectively “Plaintiffs”) and Defendants Sprocket Media Inc. and Kyle H. Walkenhorst  
31 (collectively “Defendants”) (individually, the “Party,” and collectively, the “Parties”) recognize  
32 that, pursuant to discovery or otherwise during the course of the lawsuit between Plaintiffs and  
33 Defendants (“this Action”), the Parties may be required to disclose financial information, trade  
34 secrets, or other confidential and proprietary information within the meaning of Fed. R. Civ. P.  
35 26(c);

36 ///

37 ///

1           WHEREAS the Parties, through Counsel, have stipulated to this Stipulated Protective  
 2 Order and Confidentiality Agreement (“Protective Order”) pursuant to Fed. R. Civ. P. 26(c) to  
 3 prevent disclosure of such confidential and proprietary information; and

4           WHEREAS the Parties agree that this Protective Order shall be effective and binding  
 5 throughout all proceedings relating to this Action, and shall apply to all discovery in this Action,  
 6 including discovery of non-parties, who shall be entitled to designate documents or testimony in  
 7 accordance with this Protective Order.

8           **IT IS ORDERED AS FOLLOWS:**

9           1.       All information that has been provided by the Parties in the course of this  
 10 Action or will be produced by the Parties in the course of this Action shall be used solely for the  
 11 purpose of preparation and trial of this Action and for no other purpose whatsoever, and shall not  
 12 be disclosed to any person except in accordance with the terms of this Protective Order.

13           2.       A Party or Parties who are producing, using or disclosing (“Producing  
 14 Party”) information or documents (as defined by Fed. R. Civ. P. 34(a)) or any summaries or  
 15 compilations derived there from, including but not limited to productions of documents, answers  
 16 to interrogatories, responses to requests for admissions, deposition testimony, exhibits, and all  
 17 other discovery, regardless of format (“Discovery Material”) may designate the Discovery  
 18 Material produced, used or disclosed in connection with this Action as “CONFIDENTIAL,”  
 19 subject to the protections and requirements of this Protective Order, if so designated in writing to  
 20 the other Parties by affixing, or causing to be affixed, such designation to any document or piece  
 21 of information, or orally if recorded as part of a deposition, pursuant to the terms of this  
 22 Protective Order. The Parties are in the process of discussing the use of a “CONFIDENTIAL,”  
 23 ATTORNEYS’ EYES ONLY” designation. The Parties reserve the right to submit an amended  
 24 stipulated protective order and confidentiality agreement or submit briefing regarding an  
 25 Attorneys’ Eyes Only designation at a later date.

26           3.       Any Discovery Material designated as “CONFIDENTIAL” shall be  
 27 maintained as confidential, not to be disclosed, and shall be used by the Party or Parties receiving  
 28

1 such Discovery Material (“Receiving Party”) solely in connection with this Action and shall not  
2 be disclosed to anyone other than:

- 3 A. The Court, including court personnel, any court exercising appellate  
4 jurisdiction over this Action, and stenographers transcribing a  
5 deposition;
- 6 B. Employees for a Receiving Party to whom it is necessary that the  
7 material be shown for purposes of this Action and who have signed  
8 a Declaration in the form of Exhibit A attached;
- 9 C. Outside counsel of record who are signatories to this Protective  
10 Order for a Receiving Party and employees of such attorneys and  
11 law firms to whom it is necessary that the material be shown for  
12 purposes of this Action;
- 13 D. Independent technical experts, consultants, investigators, or  
14 advisors of a Receiving Party, who are qualified by knowledge,  
15 skill, experience, training or education and retained by outside  
16 counsel to assist in the preparation or trial of this Action and to  
17 whom it is necessary that the information be disclosed, and who  
18 have signed a Declaration in the form of Exhibit A attached;
- 19 E. Document contractors, electronic discovery contractors, exhibit  
20 contractors, graphic art contractors and jury consultants who are  
21 engaged by outside counsel to assist in the preparation or trial of  
22 this Action and to whom it is necessary that the material be shown  
23 for purposes of this Action, and who have signed a Declaration in  
24 the form of Exhibit A attached; and
- 25 F. Potential witnesses to the extent the Discovery Material was  
26 authored by or addressed to the person or such person is established

1 as knowledgeable of such information or contents of the Discovery  
 2 Material prior to disclosing the Discovery Material.

3       4. In the case of a document or thing, a designation of “CONFIDENTIAL”  
 4 shall be accomplished by marking every page of the document or conspicuously marking the  
 5 thing with the appropriate legend “CONFIDENTIAL” in a manner that shall not interfere with the  
 6 legibility of the information contained in the Discovery Material.

7       5. As set forth in this paragraph and its subparts, information conveyed or  
 8 discussed in testimony at a deposition shall be subject to this Protective Order, provided that it is  
 9 designated as “CONFIDENTIAL” orally or in writing either at the time of the deposition or after  
 10 receipt by the Parties of the transcript, as provided in this Protective Order.

11      A. For such time as any Discovery Material designated  
 12       “CONFIDENTIAL” are disclosed in a deposition, the Party whose  
 13       information or document is to be disclosed shall have the right to  
 14       exclude from attendance at that portion of the deposition any person  
 15       who is not entitled to receive such information or document  
 16       pursuant to this Protective Order.

17      B. In the event that a party believes that “CONFIDENTIAL”  
 18       information will be disclosed during a deposition, counsel for the  
 19       Party may designate on the record that all or specific portions of the  
 20       deposition transcript, and the information contained therein, is to be  
 21       treated as “CONFIDENTIAL”

22      C. If not orally designated during a deposition, a Party shall have  
 23       seven (7) days after receiving a copy of the deposition transcript in  
 24       which to designate all or specific portions of the transcript as  
 25       “CONFIDENTIAL,” as appropriate. If, within such seven (7) days,  
 26       no Party designates portions of the transcript as  
 27       “CONFIDENTIAL,” all Parties shall be permitted to use such  
 28       portions of the transcript and the information contained therein with

1 no restrictions of confidentiality except as otherwise required by  
 2 this Protective Order.

3 6. In the case of expert reports, if any Discovery Material designated  
 4 “CONFIDENTIAL” pursuant to this Protective Order is specifically identified in, paraphrased, or  
 5 attached to an expert’s report, the report shall be marked on its cover as “CONFIDENTIAL,” the  
 6 portion of the report reflecting such information shall be stamped “CONFIDENTIAL,” and  
 7 access to the portion so designated shall be limited pursuant to the terms of this Protective Order.  
 8 The Party retaining the expert shall be responsible for the initial stamping of such report.

9 7. All “CONFIDENTIAL” Discovery Material in any affidavits, motions,  
 10 briefs, memoranda, or other papers filed with any court shall be designated as  
 11 “CONFIDENTIAL” and filed under seal, with an affidavit explaining, in general terms, the  
 12 information that is protected. In the event that any “CONFIDENTIAL” Discovery Material is  
 13 filed, included in, or referred to in any paper filed with the Court, counsel responsible for such  
 14 filing shall notify the Clerk of the Court in accordance with the Court’s procedures at the time of  
 15 filing that such paper contains “CONFIDENTIAL” Discovery Material protected by this Order,  
 16 and shall notify the other Parties of the confidential nature of the filing. The Clerk of the Court  
 17 shall keep such “CONFIDENTIAL” Discovery Material under seal until further order of the  
 18 Court; provided, however, that access to such Discovery Material filed with the Court shall be  
 19 afforded to the Court and to counsel of record in this matter.

20 8. Nothing in this Protective Order shall be construed to restrict the use or  
 21 disclosure of “CONFIDENTIAL” Discovery Material at trial or any other court proceeding;  
 22 provided, however, that the use or disclosure of “CONFIDENTIAL” Discovery Material at trial  
 23 or any other court proceeding shall be addressed by this Court at the appropriate time. Counsel  
 24 for the Parties agree to confer in good faith about procedures for handling Discovery Material  
 25 designated “CONFIDENTIAL” during trial or any hearing in open Court of this action, including  
 26 the possibility of an additional order.

27 9. Nothing shall be designated as “CONFIDENTIAL” if it is information that:  
 28 A. is in the public domain at the time of disclosure;

- B. becomes part of the public domain through no action or fault of the other Parties, the Receiving Party, or counsel, or any expert, or other person to whom disclosure is permitted pursuant to this Protective Order;
- C. was in the rightful and lawful possession of the Receiving Party at the time of disclosure on a non-confidential basis from a source other than the Producing Party, provided that such source is not bound by a confidentiality agreement with the Producing Party; or
- D. is lawfully received by the Receiving Party at a later date from a Party without restriction as to disclosure, provided such Party has the right to make the disclosure to the Receiving Party.

10. The failure of a producing party to designate Discovery Material as “CONFIDENTIAL” in accordance with this Protective Order, and the failure of a Receiving Party to object to such a designation, shall not preclude the Party at a later time from subsequently designating or objecting to the designation of such Discovery Material as “CONFIDENTIAL.” The Parties understand and acknowledge that a Producing Party’s failure to designate Discovery Material as “CONFIDENTIAL” at or within the time specified in this Protective Order relieves the other Parties of any obligation of confidentiality until the designation is actually made.

11. Unless otherwise permitted, within ninety (90) days after the conclusion of this lawsuit, including all appeals there from, all documents designated as "CONFIDENTIAL," all copies of documents designated as "CONFIDENTIAL," and all excerpts there from in the possession, custody or control of the Receiving Parties, and their experts, investigators, advisors, or consultants shall be destroyed or returned to counsel for the Producing Party. However, outside counsel may retain pleadings, attorney and consultant work product, and depositions for archival purposes only; those materials shall not be disclosed to anyone. Upon request, a Party and its counsel shall separately provide written certification to the Producing Party that the actions required by this paragraph have been completed.

1                   12. Notwithstanding anything in this Protective Order to the contrary, the  
 2 confidentiality obligations of this Protective Order shall not prohibit the disclosure by any Party  
 3 of any Discovery Material required to be disclosed by any law, regulation, order, or rule of any  
 4 governmental authority; provided, however, that if a Party is required to disclose the Discovery  
 5 Material designated as confidential pursuant to any law, regulation, order or rule of any  
 6 governmental authority, the Party shall give immediate advance written notice of any such  
 7 requested disclosure to the counsel of the other Party or Parties to afford the original Producing  
 8 Party the opportunity to seek legal protection from the disclosure of such Discovery Material.

9                   13. This Protective Order shall be without prejudice to the right of any Party:

- 10                   A. to have determined by motion, at any time, whether any Discovery  
                       Material has been improperly designated as “CONFIDENTIAL,” in  
                       which event, the Party asserting confidentiality shall have the  
                       burden of establishing the confidentiality of the Discovery Material;  
                       and
- 11                   B. to apply to the Court for relief from any of the requirements of this  
                       Protective Order, for good cause.

12                   14. The attorneys of record for the respective Receiving Parties shall retain the  
 13 original, executed Declarations (in the form of Exhibit A attached) that have been executed by  
 14 any person to whom Discovery Material designated as “CONFIDENTIAL,” pursuant to this  
 15 Protective Order.

16                   15. If discovery is sought of a person or entity not a party to this Action  
 17 (“Third Party”) requiring disclosure of such Third Party’s information that may properly be  
 18 designated “CONFIDENTIAL,” the Third Party may designate such information  
 19 “CONFIDENTIAL,” and it will be accorded the same protection as the Parties’  
 20 “CONFIDENTIAL” information.

21                   16. In the event that any Discovery Material designated as “CONFIDENTIAL”  
 22 is disclosed, through inadvertence or otherwise, to any person not authorized under this Protective  
 23 Order, then the Party who disclosed the Discovery Material (“Disclosing Party”) shall use its best

1 efforts to bind such person to the terms of this Protective Order; and the Disclosing Party shall  
 2 (a) promptly inform such person of all the provisions of this Protective Order; (b) identify such  
 3 person immediately to the Party or Third Party that designated the document as  
 4 "CONFIDENTIAL"; and (c) request such person to sign a Declaration in the form of Exhibit A.  
 5 The executed Declaration shall be promptly served upon the Party or Third Party designating the  
 6 Discovery Material as "CONFIDENTIAL."

7           17. All references to "days" in this Protective Order shall be construed  
 8 pursuant to the provisions of Fed. R. Civ. P. 6.

9           18. This Protective Order may be executed in any number of counterparts, all  
 10 of which, upon complete execution thereof by the Parties, collectively shall be deemed to be the  
 11 original.

12           19. The Parties agree to abide by and be bound by the terms of this Protective  
 13 Order upon signature as if the Protective Order had been entered on that date.

14           20. Written notice provided under this Protective Order shall be by way of  
 15 regular U.S. mail and electronic mail, with a copy to all counsel of record.

16           21. The Court shall retain jurisdiction over the Parties for the purpose of  
 17 ensuring compliance with this Protective Order and granting such amendments, modifications,  
 18 and additions to this Protective Order and such other and further relief as may be necessary, and  
 19 any Party may apply to the Court at any time for an amendment, modification, or addition to this  
 20 Protective Order. This Protective Order shall survive the final disposition of this Action, by  
 21 judgment, dismissal, settlement, or otherwise.

22           22. The Parties may, by stipulation, provide for exceptions to this Protective  
 23 Order and any Party may seek an order of this Court modifying this Protective Order.

24           **SO ORDERED** this 16th day of February, 2017.

25  
 26             
 27           \_\_\_\_\_  
 28           UNITED STATES MAGISTRATE JUDGE

1 RESPECTFULLY SUBMITTED,

2  
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